
(1989) 07 OHC CK 0033

In the Orissa High Court

Case No : Original Jurisdiction Case No. 2376 of 1988

Narayan Sahoo and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 31-07-1989

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1989) 68 CLT 760

Hon'ble Judges : S.C. Mohapatra, J; R.C. Patnaik, J

Bench : Division Bench

Advocate : A.S. Naidu and P. Mohanty, for the Appellant; R.K. Patra, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

R.C. Patnaik, J.—By and large, common man is not litigation minded, nor he is averse to litigation. Litigation is not his pursuit, his hobby sometimes, however, he inherits litigation and willy-nilly pursues it. Often, however, a litigation is thrust on him. The Petitioners belong to the last category. Why did they approach the portals of a court which a prudent man approaches as a last resort because of the time that is consumed in litigation and the financial drain it involves?

2. This is their tale.

They are senior Stenographer - Petitioners 1 to 10 and 12 are Senior Stenographers to the Judges and Petitioner No. 11 is Senior Stenographer to the Registrar. They have been imploring for years for the upgradation of their posts to that of personal Assistants. The Government had decreed the benefit years back to the Stenographers to the Secretaries, Special Secretaries, Addl. Secretaries, Heads of Departments. Collectors and the Advocate General. The High Court even has espoused their cause as reasonable, justified and deserving. Recommendation, as it did emanate from the High Court, the apex Court of the State, should normally have been accepted by the Executive. The proposal was

however, scotched by an ingenious device.

3. The work of and the responsibilities entrusted to the Senior, Stenographers attached to the Judges and the Registrar of this Court are no less burden-some and exacting than those of their counterparts attached to the Secretaries, Additional Secretaries and Heads of Departments of the Government. The Senior Stenographers attached to the Judges and the Registrar even shoulder extra burden as part and parcel of judicial administration of the State. They attend the residential offices of the Judges and the Registrar on Sundays and holidays also. They have referred to the, nature of the work and responsibilities in Annexure-5 annexed to the writ application.

4. The posts of Stenographers attached to the Secretaries. Additional Secretaries and Special Secretaries were upgraded as personal. Assistants vide Home Department Order No. 60718 dated 18-12-1979. By decision of the Govt. as conveyed by letter No. 55252 dated 24-1-1981, Personal Assistants have been granted special pay. Reference is made to Annexures-I and 2. Vide Central Administration. Department Memo No. 1324 dated 21-5-1980 and No. 14246 dated 30-6-1983, Posts of Stenographers attached to various Heads of Department were upgraded as personal Assistants. Some of the Heads of Departments are Chief Engineer, Roads, Chief Engineer, Buildings, Chief Engineer, Irrigation, Chief Conservator of Forests, Director of Public Instruction, Commissioner of Commercial Taxes, Registrar of Co-operative Societies, Labour Commissioner and Director of Fisheries etc. The Petitioners have averred to they are also employees of the State, in the judicial wing and hoped and trusted that the Government would treat them justly and fairly and accord them the same privileges and rights as were granted, to their counterparts in the executive wing. Since the Constitution does not mandate differential treatment, they hoped that this aspect would not be overruled by, the Executive. When the Government failed in the discharge of its duty, they pleaded before the High Court, which having been convinced of legitimacy and justness of their, claim moved the Government by letter No. 2788 dated 29/31-1-1983 and by letter No. 661 dated 9-1-1984 recommending upgradation of the posts. By letter dated 11-2-1985. Government informed the Registrar that the proposal for upgrading the post was under active consideration of the Government. However, by letters dated 20-2-1986 and 29-4-1986, the Registrar was informed that due to the economic ban imposed by the Government the proposal to upgrade the posts of Senior Stenographers attached to the Hon'ble Judges and the Registrar of the Court was not acceptable. The objection raised by the Government was so unreal and untenable that the Petitioners pressed upon the Registrar again to move the Government. The Registrar wrote to the Government drawing attention to the discriminatory treatment that was meted out to the Senior Stenographers attached to the Judges and the Registrar of the Court and to the fact that there was considerable discontentment amongst them. He emphasised that the financial implication involved in the proposal was meagre and the State Government should reconsider the matter. By letter dated 6-10-1986 the request

was turned down. the Petitioners have averred that the plea of subsistence of economic ban was a mere plea to justify discrimination. Because despite it, large number of posts have been created under the Government Tribunals have been set up. Posts for their staff have been created and appointments have been made thereto. A good number of posts have been upgraded despite the ban. Service conditions have been improved by providing better amenities and comforts. The Registrar again moved the Govt. by his letter dated 16-2-1987 requesting that the posts be upgraded and the same be declared as specially gazetted. He reiterated that the financial burden on the Government would not be considerable. The proposal was turned down again and the Government reaffirmed its decision as conveyed by their letter dated 22-12-1987.

5. As the counsel opened the case and went on placing the facts and documents our initial reaction of disbelief was gradually transformed into a feeling of surprise and regret. We were surprised at the hollowness of the plea for negating the claim of the Petitioners and were sad that requests made by this Court could be and was turned down in so indecorous a manner.

6. There can be no doubt that the claim made by the senior stenographers for upgradation of their posts to that of personal Assistants is just and deserving, By what parity of reasoning can their claim be rejected when the Govt. have already accorded the benefit and privileges to the Stenographers of Officers as enumerated in Annexures-3 and 4? One of the strategies employed to deny the claim of the Petitioners was that the Judges and the Registrar of the Court "did not deal with the general public directly". We fail to comprehend the signification. Not most of the officers deal with the general public directly, Besides, what have the stenographers to do with the general public? What impact that has on the nature of their work perplexed by the stand taken in the counter affidavit, we called upon the counsel for the State to produce the file for our enlightenment as to how the matter was really dealt with at the Government level. There was more surprise in store for us. The file revealed that the proposal had been acceded to by the Government at the highest level. The Secretary to Government in the Home Department was satisfied that the claim of the Senior Stenographers was acceptable. the Chief Secretary agreed with him. The Chief Minister gave imprimatur of approval, on 31-7-1986. The proposal was thereafter forwarded to the General Administration Department which returned the file to the Home Department indicating that the matter could be considered after the ban period imposed by the Finance Department was over. We called upon the Government to file affidavits stating the circumstances in which even the decision of the Government at the highest level was not implemented and has been successfully kept in abeyance for more than two years and a half. In affidavit dated 10-5-1989. the Secretary to Government in Finance Department stated that there was general ban on creation of new posts and upgradation of existing posts. Creation and upgradation could, however, be made on the recommendation of the High Power Committee consisting of the Chief Secretary, Additional Development Commissioner. Secretary of Finance and the Secretary of the Home Department.

It is not understood why in view of the direction of the Chief Minister, the matter was not placed before the High Power Committee? It is admitted in the affidavit that a few hundred posts were created after 31-7-1986 when the Chief Minister, as the Minister of Home, accepted the claim of the Petitioners. Both the Finance and the General Administration Departments have blamed the Home Department for the inaction. We are not assessing the materials with a view to apportioning blame. It is pointless to do so. But the facts remain that there was lack of empathy at the other end. If the stand was so clear, as revealed from the affidavits filed by the Secretaries of the Finance and of the General Administration Departments, why was no action taken by the Home Department forthwith especially when the Chief Minister had concurred in the proposal. What can account for the inaction and the delay? The letter of the Registrar dated 16-2-1987 should have activated the Home Department. Where was the occasion and scope for rejection of the proposal as indicated by letter dated 6-10-1986 without referring the matter to the High Power Committee? Had the High Power Committee negatived, a different question with different dimensions could have arisen. The Home Department had no jurisdiction after the Chief Minister's direction to scotch the proposal, though temporarily.

7. We endorse what was said judicially in a *pari materia* situation and adopt:

Recommendation of the Chief Justice of a High Court deserves respect and utmost consideration. It should not be treated to be on par like the recommendation of any official of a bureaucracy in the Secretariat. When recommendation with regard to the conditions of service of an officer of a High Court is made by the Chief Justice, it is in fitness of thing; that ordinarily and normally the said recommendation should be accepted by the Government. The sovereignty of the people is reflected under our Constitution in three wings - the Executive, the Legislature and the Judiciary. Neither is superior to the others. Each has been assigned its role.

The Chief Justice is the Head of the Judiciary in the State. When therefore, he makes recommendation the inevitable presumption is that, it has been made with a full sense of responsibility and circumspection and after having weighed various public interests as well as financial aspect involved. After all the sense of responsibility cannot be said to reside only in the corridors of the State Secretariat. Who better than the Chief Justice can know the nature of the duties performed by various officers in the High Court?

8. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it, is unequal both according to political logic and constitutional law and is, therefore, violative of Article 14, and if it affects any matter relating to public employment, it is also, violative of Article 16 (see *E.P. Royappa Vs. State of Tamil Nadu and Another*,).

In fact, the concept of reasonableness and non-arbitrariness pervades the entire constitutional scheme and is a golden thread which run through the whole of the fabric of the Constitution, vide *Ajay Rasia v. Khalid Mujib* AIR 1978 S.C. 596.

9. In our opinion, the plea of the State Govt. in its counter affidavit that the Senior Stenographers have further promotional avenues available to them and that the nature of their work and responsibility are different, are not worth consideration. Firstly, it is not open to the State Government to take such a stand when the claim was conceded by the Home Department and agreed to by the Chief Minister. We simply wonder how an affidavit could be filed by the Home Department contrary to the decision taken by it and the order passed by the Chief Minister. Secondly, all relevant considerations being the same, persons holding identical posts cannot be treated differently in the matter of their pay etc. merely because they belong to different departments (see *D.S. Nakara and Others Vs. Union of India (UOI)*,). We are of the view that when the claim is made on grounds of equality, the same cannot be denied on ground of economic ban or absence of resources, because the vice raising its head on denial is infringement of Articles 14 and 16. The State cannot transgress the Constitution on any ground whatsoever, much less, on the ground of financial stringency.

10. We would, therefore, accept the writ application and issue a writ of mandamus to the opposite parties directing them to "upgrade within a month hence, the posts of Senior Stenographers attached to the Judges and the Registrar of the High Court to that of Personal Assistants with all benefits as are admissible under the law by way of parity with effect from 1-11-1986.

In the circumstances, there would be no order as to costs.

S.C. Mohapatra, J.

I agree.

Writ application allowed.